

IED KALCZYNSKI  
to  
BEAU FRIEDLANDER

September 21, 1999

#84

Dear Beau,

In answer to Vicki Gordon's letter of September 16 and your note that accompanied it, I'm just not interested in Sexy Minutes. (There's another bad pun.) Let's assume that they are completely honest and will do exactly what they say. Even so, according to an earlier letter of yours, they want to do an "explosive news story" about Dave's being a sell-out radical. To me that sounds like cheap propaganda. In fact, it could hardly be anything else. Though I must admit that I'm tempted by the idea of retaliating against my brother in that way, I'm not going to do it. By knowingly lending myself to cheap propaganda I would lower myself, and perhaps <sup>lose</sup> some respect from the kind of people by whom I most want to be respected.

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Now for your undated letter that begins, "This is the letter that I agreed to send you when we had our conference call on September 7." I'm not a lawyer, but this letter does not appear to me to be satisfactory. It had been my understanding that I was to receive a letter from Jeffrey Miller expressing his legal opinion. I question whether your statement that Miller gave you such-and-such an opinion would be of any legal utility to me. Moreover, <sup>as to</sup> Miller's statement that the release of the four documents

"would not result in the wholesale waiver of privilege with respect to the other currently privileged documents" — The word "wholesale" is much too vague. The statement does not exclude the possibility that there might be waiver of privilege with respect to some other privileged documents, and they might be documents with respect to which I would not want to waive privilege.

Moreover, this opinion of Miller's completely ignores the other problem that we discussed: If I should win my Motion to Suppress Evidence, certain non-privileged documents would cease to be admissible as evidence in my case. But if, meanwhile, some of those documents had been used in a civil action and thereby became part of the record of the case, then those documents would be admissible as evidence in my criminal case regardless of the Motion to Suppress Evidence. The question was whether, in the event there were a suit for ~~copyright infringement~~ libel, and you subpoenaed non-privileged documents that had been cited in Truth versus Lies to defend yourself, this could enable the plaintiffs to subpoena other non-privileged documents that would be legally disadvantageous to me in my criminal case.

It was my understanding from our September 7

conference call that it was Miller's opinion that this would not be a problem; i.e., that there was very little likelihood that the plaintiffs in a libel action (still less in a copyright action) would be able to subpoena non-privileged documents other than those that were cited in Truth versus Lies. But your letter of assurances contains no mention of Miller's opinion on this point.

Your agreement "to provide legal defense for me in the event we should be sued for defamation or libel" is of no interest to me. I don't care in the least if someone does sue me for libel, because all they could get would be a monetary award, and I have no money to lose anyway. It had been my understanding from our September 7 conference call that I was to be assured of legal defense against efforts to subpoena, in connection with a civil suit, privileged or non-privileged documents that would be disadvantageous to me in my criminal case. Legal defense against a libel suit would not assure me of defense against efforts to subpoena such documents, because the documents might not be disadvantageous to me in the libel action even if they were disadvantageous to me in the criminal action.

Until these issues are resolved, I do not agree to the conditions stated in your recent

undated letter of assurances.

I am sending Quin Denvir a copy of your letter, to get his opinion. I suspect he will agree with me that your letter of assurances is not adequate. You might want to telephone him to get a better idea of what he would consider an adequate letter of assurances.

It appears that our legal issues are not yet resolved.

Warm regards,

Ted